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E-filed: October 31, 2016.

Counsel for Christian and Anna Carla Lopez

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re: ALAN DAVID TIKAL,

Debtor.

Bankruptcy No. 11-23486-LED

Chapter 7

CHRISTIAN LOPEZ & ANNA CARLA
LOPEZ,

Plaintiffs,

Adv. Pro. No. 16-01045-LED

vs.

ALAN DAVID TIKAL, also known as
DAVID ALAN TIKAL, individually and as
Trustee of KATN REVOCABLE LIVING
TRUST; VICTORIA NELSON, solely in
her official capacity as Chapter 7 Trustee,

Defendants.

**APPLICATION FOR DEFAULT
JUDGMENT AGAINST
DEFENDANTS ALAN DAVID
TIKAL AND VICTORIA NELSON**

Hearing Date: December 5, 2016
Hearing Time: 1:30 p.m.

Plaintiffs, Christian Lopez and Anna Carla Lopez, individuals (collectively hereafter “Plaintiffs” or “Lopez”), by and through their counsel of record, James D. Greene of the firm Greene Infuso, LLP, hereby move the above-entitled Court for entry of Default Judgment in their favor and against Defendant Alan David Tikal, also known as David Alan Tikal, individually and in his capacity as trustee of the KATN Revocable Living Trust (“Tikal” or “Defendant Tikal”), as follows:

1 1. Plaintiffs request that the Court find that the following written instruments were
2 fraudulently procured, and determine that Plaintiffs owe nothing to Defendant Tikal, and that the
3 following documents shall be cancelled, rescinded, voided, and declared to have no legal effect;

4 (A) Note Secured by Deed of Trust (Straight Note) dated December 4, 2010
5 ("Tikal Note"), a copy of which is attached hereto as **Exhibit A**; and

6 (B) Short Form Deed of Trust and Assignment of Rents (Individual) dated
7 December 4, 2010 ("Tikal DOT"), which purports to secure the Tikal Note,
8 and which was recorded as Instrument No. 2010-0522989 in the Recorder's
9 Office in San Bernardino County, California on or about December 9, 2010
10 against the real property owned by Plaintiffs commonly known as 4132
11 Descanso Avenue, Chino Hills, California ("Property").¹ A copy of the
12 Tikal DOT is attached hereto as **Exhibit B**.

13 2. For a judicial determination that title to the Property hereby is quieted in favor of
14 Plaintiffs, and against Defendant Tikal and that the Tikal DOT is expunged from title to the
15 Property, and shall have no effect on title to the Property otherwise.

16 3. For a determination that pursuant to California Civil Code section 2941, Defendant
17 Nelson, as the Trustee in this Chapter 7 bankruptcy case ("Trustee" or "Defendant Nelson"), as
18 assignee of the interests of Defendant Tikal, is authorized to, and shall, execute all such
19 documents provided to her by Plaintiffs as may reasonably be necessary to reconvey, or cause to
20 be reconveyed, the Tikal DOT. The Trustee shall either record such executed documents with the
21 Recorder's Office in San Bernardino County, California, or provide such executed documents to
22 Plaintiffs, who thereafter may record them.

23 For the convenience of the Court, Plaintiffs have attached a proposed form of judgment
24 hereto as **Exhibit C**.

25 _____
26 ¹ The legal description of the Property is as follows: ALL THAT REAL PROPERTY SITUATED IN THE
27 COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS: LOT 19, TRACT
28 NO. 1932, AS PER MAP RECORDED IN BOOK 30 OF MISCELLANEOUS MAPS, PAGES 1 TO 5 INCLUSIVE,
IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY. SUBJECT TO RESTRICTIONS,
RESERVATIONS, EASEMENTS, COVENANTS, OIL, GAS OR MINERAL RIGHTS OF RECORD, IF ANY.
APN: 1028-041-19-0-000

1 This Application is made pursuant to Federal Rules of Civil Procedure 55(b)(1), and made
 2 applicable in this matter by Federal Rule of Bankruptcy Procedure 7055. This Application is
 3 made on the grounds that Defendant Tikal and Defendant Nelson were both served with a copy of
 4 the Summons and Adversary Complaint in this action on August 4, 2016 (**ECF Nos. 13, 14 &**
 5 **15**); that Default was duly entered against Defendant Tikal and Defendant Nelson on September
 6 28, 2016 (**ECF No. 21**); for Defendant Tikal's and Defendant Nelson's failure to answer or
 7 otherwise defend this action; and that neither Defendant Tikal or Defendant Nelson are in the
 8 military service of the United States of America, and are not an infant nor an incompetent person;

9 In support of this Application, Plaintiffs rely on the Summonses issued and served in this
 10 action and Adversary Complaint filed and served in this action, the Declaration of Anna Carla
 11 Lopez, the Declaration of James D. Greene filed in support of the Application, all pleadings and
 12 papers filed herein, and any argument this Court may choose to hear.

13 DATED this 31st day of October, 2016.

14 **GREENE INFUSO, LLP**

15 /s/ James D. Greene

16 JAMES D. GREENE, ESQ.

17 3030 South Jones Boulevard, Suite 101
 18 Las Vegas, Nevada 89146

19 Attorneys for Christian and Anna Carla Lopez
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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

A. Procedural Facts Supporting Entry of Default Judgment²

1. Defendant Tikal filed this bankruptcy under Chapter 11 of the Bankruptcy Code on August 25, 2011. The Court entered an order converting this case to Chapter 7 on October 20, 2011. Defendant Nelson was appointed Chapter 7 Trustee.

2. On August 3, 2016, Plaintiffs, by and through their counsel of record, filed an amended adversary complaint against Defendant Tikal and Defendant Nelson. **(ECF No. 9.)**

3. On August 4, 2016, this Court issued Summonses and Notices of Scheduling Conference in an Adversary Proceeding to Defendant Tikal and Defendant Nelson. **(ECF No. 12.)**

4. On August 4, 2016, Defendant Tikal and Defendant Nelson were served with the Summonses, Adversary Complaint, Standard Discovery Plan, and Scheduling Order Packet. **(ECF Nos. 13, 14 & 15.)**

5. More than thirty (30) days, exclusive of the day of service, have lapsed since service of the Summonses, Adversary Complaint, Standard Discovery Plan, and Scheduling Order Packet on Defendant Tikal and Defendant Nelson.

6. Defendant Tikal and Defendant Nelson have not answered or otherwise plead, appeared, or responded to the Complaint, and neither has requested any additional time in which to file an answer or otherwise plead.

7. On September 27, 2016, Plaintiffs filed an Amended Request for Entry of Default against Defendants with supporting documents. **(ECF Nos. 19 & 20.)**

8. On September 28, 2016, the Court entered Default against Defendant Tikal and Defendant Nelson. **(ECF No. 21.)**

9. Defendant Tikal and Defendant Nelson are not an infant or incompetent person, and are not presently serving in the military of the United States of America.

² These facts are set forth and supported by the Declaration of James D. Greene filed concurrently.

1 **B. Factual Basis Underlying Plaintiffs' Claims and Supporting Entry of Default**
2 **Judgment Against Defendants**

3 Plaintiffs are a married couple who reside in the home they own at 4132 Descanso Avenue
4 in Chino Hills, California (the "Property"). Tikal is the debtor in the above-captioned bankruptcy
5 case. Plaintiffs are informed and believe that Tikal, individually or in his capacity as trustee of
6 KATN, purports to be the beneficiary under a second-position Short Form Deed of Trust and
7 Assignment of Rents (Individual) against the Property dated December 4, 2010 and recorded in
8 the Recorder's Office in San Bernardino County, California on or about December 9, 2010 (the
9 "Tikal DOT"). The Tikal DOT is allegedly supported by a Note Secured by Deed of Trust
10 (Straight Note) in the principal amount of \$93,564 and dated December 4, 2010 (the "Tikal
11 Note"). The Tikal DOT and the Tikal Note may be collectively referred to herein as the
12 "Fraudulent Tikal Documents."

13 In 2010, Plaintiffs had sought a loan modification from Bank of America, which held the
14 beneficial interest in the mortgages encumbering Plaintiffs' residence. That loan modification
15 request was denied. In or about August 2010, Plaintiffs were told about Tikal who claimed to be
16 able to obtain "second chance" loan modifications. Plaintiffs contacted Tikal, who told Plaintiffs
17 that their mortgages on the Property were eligible for a loan modification, that their mortgages
18 were considered by the U.S. Government as "illegal borrowed debt" and that the U.S.
19 Government was recognizing these mortgages as illegal.

20 In or about September 2010, Plaintiffs attended a large meeting put on by Tikal at a hotel
21 ballroom that was attended by 50-100 people including homeowners, real estate agents and others
22 (the "Meeting"). At the Meeting, Tikal reiterated his claims about the alleged illegality of many
23 mortgages and his ability to obtain loan modifications even if prior modification efforts had
24 failed. Tikal also introduced his assistants and agents, including Ray Kornfeld. Subsequent to the
25 Meeting, Plaintiffs participated in at least two telephonic conference calls in which Tikal and his
26 associates discussed the illegality of the mortgages held by Bank of America and the "loan
27 modification" process they were using.

28 Thereafter, Kornfeld instructed Plaintiffs to sign a Loan Modification Agreement and
Authorization to Negotiate and Release Information which were represented as being legal

1 documents prepared by attorneys. Kornfeld told Plaintiffs that they also needed to sign a Deed of
2 Trust and a Note that would replace their existing mortgages and which would be equal to 25% or
3 their existing mortgage debt on the Property (which amounted to \$93,564). Kornfeld further
4 instructed Plaintiffs to pay the sum of \$5,000 to an organization called Caring About America,
5 Inc. (“CAA”), which was allegedly a mortgage servicing center that would begin the process of
6 working with the holder of Plaintiffs’ existing first and second mortgages, Bank of America, to
7 complete the Loan Modification. Kornfeld also told Plaintiffs to discontinue making mortgage
8 payments on their existing first and second mortgages and to wait for further instructions from
9 CAA and KATN. This seemed to make sense because when Plaintiffs sought a loan modification
10 from Bank of America, they had been instructed to stop making payments.

11 In December 2010, Plaintiffs were instructed to sign and have notarized the Tikal DOT
12 and the Tikal Note. Plaintiffs were also instructed to start making monthly payments of \$584.78
13 to KATN (the payee on the Tikal Note). Plaintiffs did as instructed, believing that Tikal and his
14 associates were helping them achieve a legitimate and much-needed loan modification.

15 On or about February 9, 2011, Plaintiffs discovered that Tikal had been arrested for
16 mortgage fraud. Plaintiffs contacted Kornfeld, who informed Plaintiffs that Tikal’s arrest was a
17 big misunderstanding and that Tikal’s attorneys were clearing up this problem.

18 During 2011 and 2012, Plaintiffs received multiple letters notifying them about a potential
19 foreclosure by Bank of America. Tikal’s representatives instructed Plaintiffs to ignore these
20 letters. They told Plaintiffs that such letters were tactics of Bank of America to scare Plaintiffs
21 and instructed Plaintiffs to submit copies of all such letters to their office so KATN could file
22 formal complaints and demand that Bank of America cease and desist from this alleged
23 harassment. Throughout this period, Plaintiffs were living with constant stress fearing that they
24 could be foreclosed and evicted at any moment.

25 In the summer of 2013, Plaintiffs were contacted by Bank of America and told that they
26 were victims of a mortgage fraud scheme. Plaintiffs contacted Kornfeld who denied the existence
27 of any such scheme, but who told them to make the best deal they could with Bank of America
28 and to stop making payments to KATN. By this time, Plaintiffs had paid approximately \$20,000

1 to CAA and KATN. Kornfeld assured Plaintiffs that they would receive a full refund of any
2 amounts paid when Tikal was out of prison.

3 In September 2014, a representative of the U.S. Department of Justice informed Plaintiffs
4 that Tikal was being sentenced and that if they would provide a copy of the documentation that
5 Plaintiffs signed, a meeting would be arranged with Tikal to get the Tikal DOT cleared from the
6 title of the Property. To date the Tikal DOT remains an encumbrance on the Properties.³

7 **II. LEGAL ARGUMENT**

8 **A. Plaintiffs have Satisfied the Standards for Entry of Default Judgment**

9 Federal Rule of Civil Procedure 55(b)(1), made applicable to this adversary proceeding
10 through Federal Rule of Bankruptcy Procedure 7055, provides that, upon request, judgment may
11 be entered by the clerk for a sum certain, plus costs, when it is shown by affidavit that said
12 amounts are due, the defendant has been defaulted for failure to appear, and the Defendant is not a
13 minor nor an incompetent person. Federal Rule of Civil Procedure 55(b)(2), made applicable to
14 the is adversary proceeding through Federal Rule of Bankruptcy Procedure 7055, provides that,
15 upon application by a party, judgment may be entered by the court in all other cases. In this case,
16 Plaintiffs seeks entry of default judgment against Defendant Tikal and Defendant Nelson for their
17 failure to appear in this action.

18 Plaintiffs have satisfied the standards for entry of default judgment against Defendants.
19 This Application, together with the Declarations of Anna Carla Lopez and of James D. Greene
20 filed in support thereof, satisfies the requirements of Federal Rule of Civil Procedure 55 and
21 Federal Rule of Bankruptcy Procedure 7055, as they set forth both the legal and factual basis for
22 entry of a default judgment against Defendants. Further, as set forth in the Declaration of James
23 D. Greene, Defendants were previously defaulted for failure to appear in this action and
24 Defendants are not infants nor incompetent persons. Accordingly, Plaintiffs request entry of
25 default judgment against Defendant Tikal and Defendant Nelson.

26
27 ³ Defendant Tikal scheduled the Tikal Note as a \$93,554.00 account receivable asset of this estate in his initially filed
28 Schedule B. (ECF 9-1, Page 10 in Defendant Tikal's main bankruptcy case.) Defendant Tikal listed the address of
the Property as the "Property Address" associated with the alleged receivable, an apparent reference to the alleged
secured status of the Tikal Note under the Tikal DOT. (*Id.*)

B. Plaintiffs are Entitled to Entry of Default Judgment on the First Claim for Declaratory Relief (Cancellation / Recession of Written Instruments)

Federal Rules of Bankruptcy Procedure 7001(7) and 7001(9) provide that equitable relief, including in the form of Declaratory Relief, is appropriate in an adversary proceeding. Likewise, Federal Rules of Bankruptcy Procedure 7001(2) and 7001(9) enable the Court to determine the validity of an alleged lien or other interest in property, and allow the Court to enter a declaratory judgment based on its findings.

As established in the accompanying Declaration of Anna Carla Lopez, Plaintiffs were defrauded into executing the Tikal Note and Tikal DOT, and do not owe any sums to Defendant Tikal or to this estate. Nevertheless, Defendant Tikal scheduled Plaintiffs' alleged debt and fraudulently induced supporting documents as assets of this estate. Under these circumstances, judicial declaration that Plaintiff does not owe any sums to Defendant Tikal or this estate, and that the Tikal Note and Tikal DOT should be cancelled and rescinded, are necessary and appropriate. Plaintiffs request such relief from this Court, and is entitled to default judgment on this claim for relief.

C. Plaintiffs are Entitled to Entry of Default Judgment on the Second Claim for Declaratory Relief (Expunging Lien and Quieting Title to Real Property)

Federal Rules of Bankruptcy Procedure 7001(7) and 7001(9) provide that equitable relief, including in the form of Declaratory Relief, is appropriate in an adversary proceeding. Likewise, Federal Rules of Bankruptcy Procedure 7001(2) and 7001(9) enable the Court to determine the validity of an alleged lien or other interest in property, and allow the Court to enter a declaratory judgment based on its findings.

As established in the accompanying Declaration of Anna Carla Lopez, Plaintiffs were defrauded into executing the Tikal Note and Tikal DOT, and they do not owe any sums to Defendant Tikal or to this estate. Nevertheless, Defendant Tikal scheduled Plaintiffs' alleged debt and fraudulently induced supporting documents as assets of the bankruptcy estate. Under these circumstances, judicial declarations that Plaintiffs do not owe any sums to Defendant Tikal or this estate, that the Tikal Note and Tikal DOT should be cancelled and rescinded, that the Tikal DOT should be expunged from title to the Property, and that title to the Property should be

1 quieted in favor of Plaintiffs and against Defendant Tikal are necessary and appropriate.
2 Plaintiffs request such relief from the Court, and is entitled to default judgment on this claim for
3 relief.

4 **CONCLUSION**

5 Based on the foregoing, Plaintiffs respectfully request entry of Default Judgment in their
6 favor, and against Defendant Tikal, and that such Default Judgment contain the following
7 findings, determinations, and relief:

8 1. That the Tikal Note and the Tikal DOT were fraudulently procured, that Plaintiffs
9 owe nothing to Defendant Tikal, and that the Tikal Note and Tikal DOT is cancelled, rescinded,
10 voided, and declared to have no legal effect;

11 2. That title to the Property is quieted in favor of Plaintiffs and against Defendant
12 Tikal, and that the Tikal DOT is expunged from title to the Property, and shall have no effect on
13 title to the Property or otherwise;

14 3. That the Default Judgment may be recorded in with the Recorder's Office in San
15 Bernardino County, California, and that such recording shall provide public notice of the
16 expungement of the Tikal DOT from title to the Property to the fullest extent permitted by law;
17 and

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1 4. That pursuant to California Civil Code section 2941, Defendant Nelson, as Trustee
2 and assignee of the interests of Defendant Tikal, is authorized to, and shall, execute all such
3 documents provided to her by Plaintiffs as may be reasonably necessary to reconvey, or cause to
4 be reconveyed, the Tikal DOT and the Trustee shall either record such executed documents with
5 the Recorder's Office in San Bernardino County, California, or provide such executed documents
6 to Plaintiffs, who thereafter may record them.

7 Dated this 31st day of October, 2016.

8 **GREENE INFUSO, LLP**

9
10 /s/ James D. Greene

11 James D. Greene, Esq.

12 3030 South Jones Boulevard, Suite 101

13 Las Vegas, Nevada 89146

14 Attorneys for Christian and Anna Carla Lopez
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(702) 570-6000

CERTIFICATE OF SERVICE

I am employed by the law firm of Greene Infuso, LLP in Clark County. I am over the age of 18 and not a party to this action. My business address is 3030 South Jones Boulevard, Suite 101, Las Vegas, Nevada 89146.

On October 31, 2016, I served the document(s), described as: APPLICATION FOR DEFAULT JUDGMENT AGAINST DEFENDANTS ALAN DAVID TIKAL AND VICTORIA NELSON

☒ by placing the ☐ original ☒ a true copy thereof enclosed in a sealed envelope addressed as follows:

☐ a. ECF System (*You must attach the "Notice of Electronic Filing", or list all persons and addresses and attach additional paper if necessary*)

☒ b. BY U.S. MAIL. I deposited such envelope in the mail at Las Vegas, Nevada. The envelope(s) were mailed with postage thereon fully prepaid.

Alan David Tikal
c/o Ray Kornfield
8121 Caramel Gorge Court
Las Vegas, Nevada 89143

Alan David Tikal
c/o Ray Kornfield
FCI
13777 Air Expressway Blvd.
Victorville, CA 92394

Victoria Nelson
3900 Paradise Road. Suite U
Las Vegas, Nevada 89169

United States Trustee
300 Las Vegas Blvd. South
Fourth Floor
Las Vegas, Nevada 89101

I am readily familiar with Greene Infuso, LLP practice of collection and processing correspondence for mailing. Under that practice, documents are deposited with the U.S.

Postal Service on the same day which is stated in the proof of service, with postage fully prepaid at Las Vegas, Nevada in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date stated in this proof of service.

- ☐ c. BY PERSONAL SERVICE.
- ☐ d. BY DIRECT EMAIL
- ☐ e. BY FACSIMILE TRANSMISSION

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 31st day of October, 2016

/s/ K. Farney
An employee of Greene Infuso, LLP